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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

No. 573.

HYMAN G. STEIN, Petitioner,

vs.

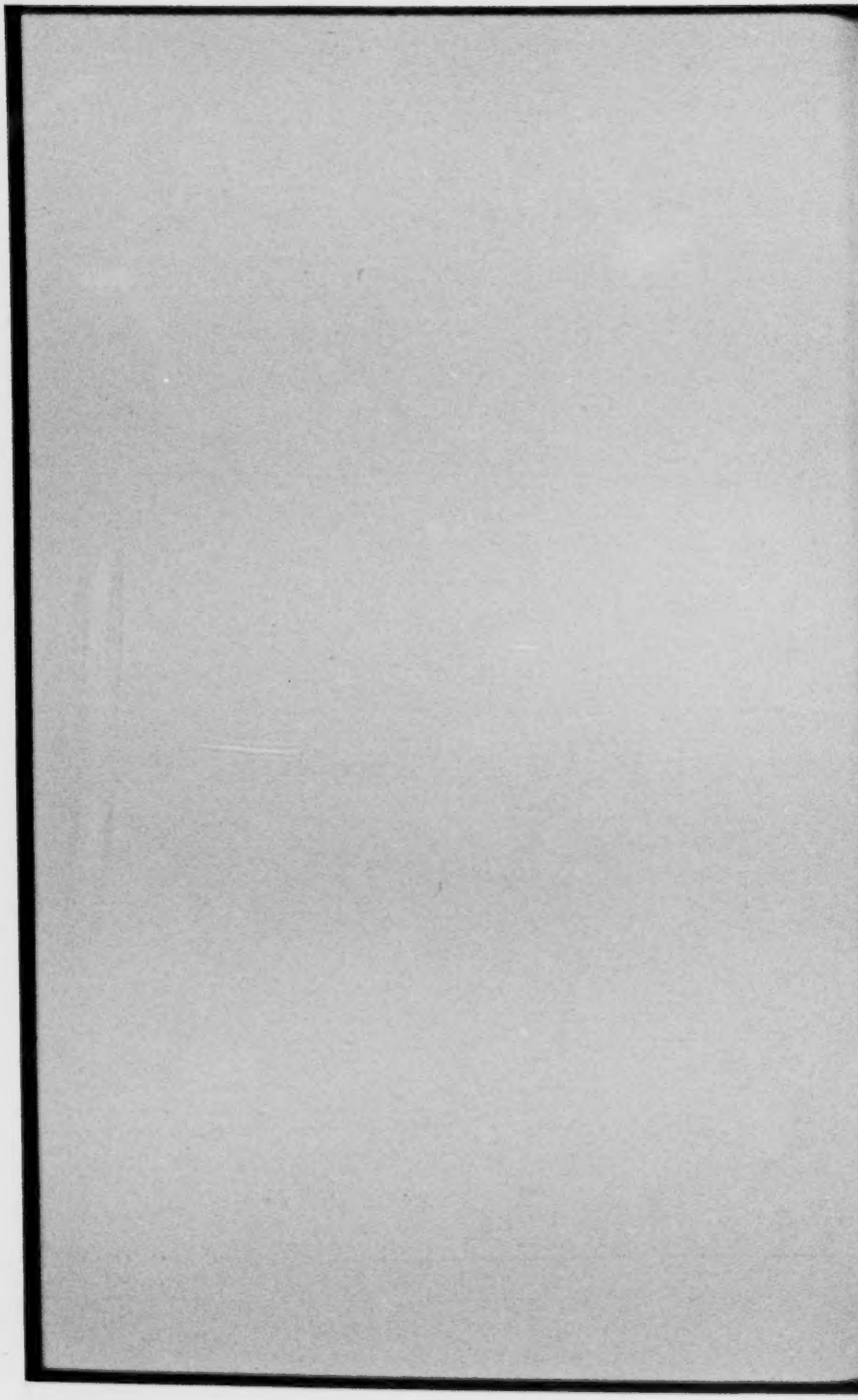
ST. LOUIS PUBLIC SERVICE COMPANY, Debtor, HENRY W. KIEL, Trustee for ST. LOUIS PUBLIC SERVICE COMPANY, et al.

BRIEF OF RESPONDENTS

In Opposition to the Granting of Certiorari to the United States Circuit Court of Appeals, Eighth Circuit.

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BRIEF OF RESPONDENTS

In Opposition to the Granting of Certiorari to the United States Circuit Court of Appeals, Eighth Circuit.

STATEMENT.

QUESTION PRESENTED.

The question presented on this petition is merely one of interpretation of the language of the plan of reorganization of a corporation under the provisions of section 77B of the Bankruptcy Act.

OUTLINE OF THE FACTS.

The specific provision of the reorganization plan involved here is as follows (R. 25):

> "Holders of tort claims will receive a sum in cash equal to 35% of the principal amount of their respective claims (without interest) and in addition thereto, and as a further payment on account of such claims the Reorganized Company shall pay in cash the reasonable compensation and expenses of The General Creditors' Committee formed under agreement dated as of July 16, 1934, and its counsel, for their services in, and in connection with, the reorganization proceedings, the amount of such compensation and expenses to be determined by the Court;"

The order of the District Court approving the reorganization plan provides, with reference to allowances for services in and in connection with the proceedings in court (R. 53):

> "The Court hereby reserves jurisdiction to make any and all allowances* **as may be proper** for the services and expenses of Protective Committees, the Reorganization Committee, Indenture Trustees, Debtor, officers of the Court for the management of the property of the Debtor, and counsel of all such persons, corporations or groups, whether the services were rendered in connection with formulating the Plan of Reorganization, in connection with any of the controversies which arose in this proceeding or in any prior corporate reorganization proceedings or in the prior equity receivership, or in representing such persons, corporations or groups in the reorganization proceedings, in any prior corporate reorganization proceedings or in the prior equity receivership. Debtor as reorganized shall pay in cash all such allowances that may be made by the Court in this proceeding or in the prior equity receivership suit."

*Emphasis is ours, wherever used, unless the contrary is stated.

Forty petitions for allowances, the demands of which aggregated $891,182.71, were filed in the District Court. (R. 232, 233.)

The summation of the allowances made by that Court is $299,534.24. (R. 233.)

Petitioner here asked for an allowance of $75,778.23. He was awarded $15,778.23. His protective committee and its secretary were given an additional $12,250.00. (R. 233.)

The respective demands and allowances are set out in the stipulation above adverted to.

The District Court, having in mind the rationale of section 77B with reference to allowances for services, as held by this Court in Dickinson Industrial Site, Inc., v. Cowan, ... U. S. ..., 84 L. ed. 549, l. c. 553, stated in its order, after making the several allowances (R. 184):

> "2. That the several allowances above made are entirely separate and independent of each other; but each individual allowance was taken into consideration by the Court in connection with the other allowances, to the end that the payment of the aggregate will not have the effect of wasting or offsetting the gratifying savings accomplished for Debtor by the Bankruptcy proceedings, but will be on a basis commensurate with those proceedings and within the ability of Debtor to pay."

Petitioner appealed from that order to the Circuit Court of Appeals, Eighth Circuit.

In affirming the order, that Court, in an opinion by Judge Woodrough, held (R. 213; Greensfelder et al. v. St. Louis Public Service Company et al., 114 Fed. 2nd, 53, 64):

> "Hyman G. Stein represented the tort claimants in the reorganization proceedings and also appeared for the general creditors and for the City of St. Louis.

His principal services were rendered on behalf of the tort creditors who through his efforts received a substantially larger share of the estate than original plans of reorganization allotted to them.

If the trial court was justified in restricting Mr. Stein's allowance by relating it to the benefit of his services to the estate, the order should be sustained, but Mr. Stein contends that the special provision of the Reorganization Plan, Section II (2d), entitled him to have the full amount of a reasonable contingent fee allowed him. The provision is appended and we think the wording, like that of Section 7 heretofore discussed, is compatible with an intent to cover compensable services only and to leave the amount thereof to the sound discretion of the trial court. Mr. Stein's efforts were primarily for his clients and the amount allowed him was not disproportionate to the benefit to the estate."

Section 7 of the reorganization plan, to which reference is made in the above quotation, reads (R. 209):

"7. Expenses and Costs of Reorganization.

"The Reorganized Company shall pay in cash all costs and expenses of administration and other allowances which may be approved or made by the Court in these proceedings, including allowance for services and expenses of protective committees, the reorganization committee, indenture trustees, the Company, officers of the Court for the management of the property of the debtor and the counsel of all such persons, corporations or groups, whether the services were rendered in connection with formulating the Plan of Reorganization, were rendered in connection with any of the controversies which arose in the reorganization proceedings or the prior equity receivership proceedings or were rendered in representing such persons, corporations or groups in the reorganization proceedings, or the prior equity receivership. The Reorganized Company shall pay in cash all costs, expenses

and allowances which may have been incurred or may be made in the prior equity receivership."

Following is the Court's interpretation of it (R. 211; Greensfelder et al. v. St. Louis Public Service Company et al., 114 Fed. 2nd 53, 59):

"Section 7 of Plan. Section 7 of the approved Plan of Reorganization, above set forth, broadens the field of services compensable by the reorganized Company on the determination and order of the Court to the extent that both the receivership and the reorganization proceedings are included and that compensation is not to be denied because services to the estate might also be services to a client. To that extent the section was appropriate and was properly incorporated in the plan. The section recites that the 'Reorganized Company shall pay in cash all costs and expenses of administration and other allowances which may be approved by the Court in these proceedings', but the wording of the section does not justify an interpretation that the court must allow fees to attorneys or others which are not properly included under the law as costs and expenses of administration. Appellants would have the section construed as though it read that the reorganized company should be required to pay as costs and expenses of administration all fees chargeable for services to their clients. But we think costs and expenses of administration which the section declares the reorganized company shall pay are those which are allowable under the law and none other. Such costs and expenses of administration do not include fees for services rendered primarily in the interests of private clients. They include only the services rendered in advancement of the reorganization proceedings and for the benefit of the estate. * * * If there may be said to be any ambiguity in section 7, it should be construed in accord with the applicable law, see Marx v. United States, 8 Cir., 86 F. 2d 245, 248; Compaigne

General Atlantique v. American Tobacco Co., 2 Cir., 31 F. 2d 633, 666, and the ambiguities resolved against those who drafted it. See Northern Pac. Ry. Co. v. Twohy Bros., 9 Cir., 95 F. 2d 220, 223; E. I. Dupont de Nemours v. Claiborne-Reno Co., 8 Cir., 64 F. 2d 224, 228; Queen Insurance Co. v. Milling Co., 8 Cir., 43 F. 2d 885, 887-8; Sternberg v. Drainage District, 8 Cir., 44 F. 2d 560, 562. The trial court's action reflects that he approved the reorganization plan under the construction that he would retain jurisdiction for lawful and proper allowances only, and that he recognized therein no shifting of liability for fees or compensation from clients to the reorganized company. He restricted compensation to services which benefited the estate and such action was not erroneous.

POINTS AND AUTHORITIES.

I.

No ground for the issuance of a writ of certiorari is shown to exist.

Supreme Court Rule 38, subdivision 5 (b).

The petition attempts to show that the decision sought to be reviewed is (a) in conflict with decisions of this Court and other circuit courts of appeals, (b) determines an important question of federal law, and (c) is in conflict with the decisions of the Missouri courts on a question of local law.

(a) No conflicting decision **"on the same matter"** or on a similar one, or, indeed, in any respect, is cited.

(b) The decision does not determine a question of federal law.

(c) The decision is not in conflict with the decisions of the Missouri courts; in fact, it merely interprets a contractual provision and no question of local law was decided or is involved. (See Greensfelder et al. v. St. Louis Public Service Company et al., 114 Fed. 2nd, 53, 64.)

II.

On the merits, the decision of the Circuit Court of Appeals is correct.

(a) Subdivision (d), paragraph 2, part II of the reorganization plan does not, as contended for by petitioner, enlarge his rights to compensation over and beyond those vouchsafed to him by law.

That paragraph does not, correctly interpreted, provide for compensation for services which, under the cases below

cited, the Chandler Act and Section 77 B of the Bankruptcy Act, are not compensable.

Teasdale v. Sefton National Fibre Can Co., 85 Fed. 2nd, 379, 383;
In re A. Herz, Inc., 81 Fed. 2nd, 511, 513;
Straus v. Baker Co., 87 Fed. 2nd, 401, 407;
Section 243, Chandler Act, 11 U. S. C. A., sec. 643;
Section 77 B (c) (9), 11 U. S. C. A., section 207.

It provides for compensation for services "in and in connection with the reorganization proceedings"—that is, for services which contributed toward the effectuation of the reorganization or were beneficial to Debtor in the administration of its estate.

In re Nine North Church Street, Inc., 89 Fed. 2nd, 13, 14.

It does not provide for remuneration for services which were primarily for the benefit of the tort creditors.

(b) The provision, as interpreted by petitioner, would be in derogation of the rules of law applicable to the allowance of compensation in reorganization proceedings, and hence, in determining whether it is susceptible of that construction, the rule *strictissimi juris* should be applied.

Moreover, it was incorporated in the reorganization plan at the behest and upon the insistence of petitioner and, therefore, it should be most strongly construed against him.

Stipcich v. Metropolitan Life Insurance Co., 277 U. S. 311, 322;
Gulf Refining Co. v. Home Indemnity Co., 78 Fed. 2nd, 842, 844;
E. I. DuPont DeNemours & Co. v. Claiborne-Reno Co., 64 Fed. 2nd, 224, 228;
Also see cases cited in Greensfelder et al. v. St. Louis Public Service Company, 114 Fed. 2nd, 53, l. c. 60.

(c) The provisions of the order confirming the reorganization plan conclusively demonstrate that the interpretation of the Circuit Court of Appeals is correct, since it provides that jurisdiction is reserved to make such allowances **"as may be proper."**

See paragraph 24 of Order No. 245. (R. 53.)

The word "proper", as used, is the synonym of "legal" or "authorized by law."

City of Mount Vernon v. Mount Vernon Trust Company, 270 N. Y. 400, 1 N. E. 2nd, 825, 827.

(d) If the reorganization plan were susceptible of the interpretation given it by petitioner, the above-cited provisions in the court order would be tantamount to a disapproval of it insofar as it might, if it undertook to do so, authorize payment for services not compensable under the law.

Wright v. City National Bank & Trust Co., 104 Fed. 2nd, 285, 288.

III.

Petitioner's complaint, that the decision deprives the tort creditors of certain rights, is not well taken.

Petitioner did not represent the tort claimants themselves; he represented their attorneys. He had no right of action against them nor lien upon their cause of action.

Moreover, the liability of the tort creditors to the protective committee and its counsel for compensation for their services and expenses was limited to $10,803.48 by the provisions of the committee agreement.

The committee, its secretary and its counsel were allowed $28,028.23.

IV.

In any view of the situation and regardless
the rights of petitioner were enlarged by the
of the reorganization plan, the amount award
fair and is all he is entitled to receive.

Callaghan v. Reconstruction Finance C
297 U. S. 464, 468;
Dickinson Industrial Site v. Cowan, ...
84 L. ed. 549, 553.

ARGUMENT.

I.

NO GROUND FOR CERTIORARI EXISTS.

No ground, under rule 38, subdivision 5 (b) of this Court, for the issuance of a writ of certiorari is set out in the petition, since the decision sought to be reviewed is not shown to be in conflict with the decision of another circuit court of appeals **on the same matter**, is not shown to be a decision of an important question of local law in a way probably in conflict with applicable local decisions, is not shown to be a decision of an important question of federal law which has not been, but should be, settled by this Court, is not shown to be a decision of a federal question in a way probably in conflict with applicable decisions of this Court, and is not shown to have so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the lower court, as to call for an exercise of this Court's power of supervision.

The petition merely assigns, as grounds for the exercise of the extraordinary jurisdiction of this Court sought, (a) that the Circuit Court of Appeals misinterpreted the language of the provisions of the reorganization plan in question and in so doing rendered a decision which is in conflict with decisions of this Court and other circuit courts of appeals (points I and II), (b) that it decided an important question of "federal law which has not been * * * but should be settled by this Court" (point II), and (c) that its decision is in conflict with certain decisions of the Missouri courts on a question of local law (point III).

A.

No conflicting decision shown.

No decision of this Court or of another circuit court of appeals is cited in the petition or the supporting brief which is in conflict with the decision in this case.

The alleged conflicting decisions cited merely lay down the rules universally followed in construing contracts; they are not decisions **"on the same matter"** or on even a similar one.

And they are not in conflict with the decision at bar on the abstract rule they announce.

B.

No question of federal law involved.

The section of the Chandler Act, cited on pages 31 and 32 of petitioner's brief, is, of course, not applicable, since it merely provides that payments for services made or promised by a debtor shall be fully disclosed to the judge and be reasonable, or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge.

This statute has nothing to do with the interpretation of the provision in the reorganization plan relied upon by petitioner and has no relevancy to the question presented here and hence its construction could not in any way be involved.

The decision sought to be reviewed does not apply, construe or advert to this statute and, therefore, it does not determine a question of federal law.

C.

No conflict on question of local law.

The decision of the Circuit Court of Appeals is not in conflict with the decisions of the Missouri courts cited,

for the reason that it does not determine that it is improper or illegal to allocate payments as between attorney and client nor pass upon the Missouri law in any way, but merely, **in construing the language of the reorganization plan,** holds that it was intended "to cover compensable services only and to leave the amount thereof to the sound discretion of the trial court."

Greensfelder et al. v. St. Louis Public Service Co., 114 Fed. 2nd 53, l. c. 64 (R. 213).

We, therefore, respectfully submit that no "special or important reason" for review by this Court is presented by petitioner or, in fact, exists.

Supreme Court Rule 38, subdivision 5.

The question involved, and determined by the Circuit Court of Appeals, is a simple one—**What does the provision of the reorganization plan mean?**

If certiorari were issued in this case, it would be equally appropriate in every case decided by the circuit courts of appeals.

II.

THE DECISION OF THE CIRCUIT COURT OF APPEALS IS CORRECT ON THE MERITS.

The provision here in question is subdivision (d), paragraph 2, part II and is as follows (R. 25):

"(d) **Tort Claimants.**

"Holders of tort claims will receive a sum in cash equal to 35% of the principal amount of their respective claims (without interest) and in addition thereto, and as a further payment on account of such claims the Reorganized Company shall pay in cash the reasonable compensation and expenses of The General Creditors' Committee formed under agreement dated

as of July 16, 1934, and its counsel, **for their services in, and in connection with, the reorganization proceedings**, the amount of such compensation and expenses to be determined by the Court."

A.

The above-quoted paragraph of the reorganization plan does not, correctly interpreted, provide for compensation for services which are not compensable under the law.

It provides for compensation for services "in and in connection with the reorganization proceedings"—that is, for services which contributed toward the effectuation of the reorganization or were beneficial to Debtor in the administration of its estate.

It does not provide for remuneration for services which were primarily for the benefit of the tort creditors.

Petitioner does not contend that his services for the tort creditors were primarily in the interest or for the benefit of Debtor; but he says that Debtor received incidental benefit therefrom.

He testified (R. 180):

> "Primarily, naturally I was representing the General Creditors' Committee which was acting for the tort creditors. **As an incident to my services** and as set forth in the pleadings stating there was a class proceeding, **the debtor certainly benefited.**"

Under the law, services performed by a lawyer for the benefit of his client "in or in connection with" a reorganization proceeding are not properly chargeable against the debtor.

Teasdale v. Sefton National Fibre Can Co., 85 Fed. 2nd, 379, 383;
In re A. Herz, Inc., 81 Fed. 2nd, 511, 513;
Straus v. Baker Co., 87 Fed. 2nd, 401, 407.

Section 243 of the Chandler Act, 11 U. S. C. A., section 643, provides that—

> "In fixing any such allowances [to creditors and their attorneys], the judge shall give consideration only to the services which contributed to the plan confirmed or to the refusal of confirmation of a plan, or which were beneficial in the administration of the estate, and to the proper costs and expenses incidental thereto."

Also, please see section 77B (c) (9), 11 U. S. C. A. section 207.

Petitioner, in order to escape from the effect of these cases and statutes, contends that the provision of the reorganization plan above quoted made it obligatory upon the District Court to allow him compensation for everything he did primarily in the interest and for the benefit of tort creditors, for any and every conceivable character of service he may have performed in any way connected with the reorganization proceedings, no matter how remote or contingent, and regardless of whether the services were inimical to the interests of Debtor—that Court to have the say-so about nothing connected with the allowance for such services except the fixation of the amount.

We maintain that the phrase, "for their services in and in connection with the reorganization proceedings," means and can only mean services in connection with some reorganization step or administrative action beneficial to Debtor.

In construing the phrase "in connection with the proceeding" in section 77B of the Bankruptcy Act, with reference to allowances for services of attorneys and others, the Circuit Court of Appeals for the Second Circuit, in In re Nine North Church Street, Inc., 89 Fed. 2nd, 13, 14, held:

"Compensation can only be allowed 'in connection with the proceeding and the plan.' The words 'in connection with the proceeding,' if taken alone, might cover any services in the course of the 77B proceeding. We think, however, that they should be limited to such necessary services as are steps in a reorganization, not merely proposed or temporarily adopted through error, but finally effected."

B.

The provision of the reorganization plan in question should be most strongly construed against petitioner because he prepared it and because, if it were given the interpretation he contends for, it would be in derogation of the law.

This provision was incorporated in the plan at the request of petitioner and upon his insistence. (See the following paragraphs of petitioner's application for allowance: 24, R. 74; 65, R. 113; 66, R. 115; exhibit C, R. 138).

If it was the intent to cover services for a private client or group, services of a character not recognized by the law as compensable, the provision should have been phrased to read:

"For all their services in behalf of the tort claimants and for any other service in and in connection with the reorganization proceedings, whether or not, under the law, compensation would be allowable therefor."

In other words, if it be permissible to short-circuit the law, the language providing for the accomplishment of that purpose should be so plain and unambiguous that there could be no possible misunderstanding about it—so that "he who runs may read."

In this connection, we call attention to the holding in

Gulf Refining Co. v. Home Indemnity Co., 78 Fed. 2nd, 842, 844:

> "It is an old rule of contract construction that language must, if ambiguous, be construed against him who uses it because **it is a natural inference that the user would make plain what is in his favor.**"

And in E. I. Du Pont De Nemours & Co. v. Claiborne-Reno Co., 64 Fed. 2nd, 224, 228, it is said:

> "The language of a contract will be construed most strongly against the party preparing it."

Please see, also

Stipcich v. Metropolitan Life Insurance Co., 277 U. S. 311, 322;

Other cases cited in Greensfelder et al. v. St. Louis Public Service Co., 114 Fed. 2nd, 53, 60.

The provision, as construed by petitioner is in derogation of the rules of law applicable to the allowance of compensation in such cases, as shown by the citations under the preceding subdivision, which is another reason for applying the *strictissimi juris* rule in construing it.

The District Court and the other creditors and stockholders might not have approved a plan containing a provision in the language we have above outlined, or similar words, "making plain what was in petitioner's favor," probably would not have; so that the effect of giving to the clause in question the interpretation contended for by petitioner would be to allow a cleverly concealed pit-fall to stand.

How could the District Judge, when he approved the reorganization plan, have construed this provision otherwise than as being in consonance with, not in derogation of, the law?

Keeping in mind the beneficent purpose of Congress in enacting the law giving financially distressed corporations a chance to rehabilitate themselves, as stated by this Court in the Dickinson Industrial Site case, supra (84 L. ed., 549, 553), and the mischief which would result from allowing a loophole for smart lawyers to continue to exploit such helpless entities, the courts should apply the rule *strictissimi juris* to a provision of the character under consideration.

C.

The provisions of the decree confirming the reorganization plan conclusively demonstrate that this interpretation is correct.

Paragraph 24 of the confirmatory decree reads (R. 53):

> "The Court hereby reserves jurisdiction to make any and all allowances **as may be proper** for the services and expenses of Protective Committees, the Reorganization Committee, Indenture Trustees, Debtor, officers of the Court for the management of the property of the Debtor, and counsel of all such persons, corporations or groups, whether the services were rendered in connection with formulating the Plan of Reorganization, in connection with any of the controversies which arose in this proceeding or in any prior corporate reorganization proceedings or in the prior equity receivership, or in representing such persons, corporations or groups in the reorganization proceedings, in any prior corporate reorganization proceedings or in the prior equity receivership. Debtor as reorganized shall pay in cash all such allowances that may be made by the Court in this proceeding or in the prior equity receivership suit."

Please note the language, "The Court hereby reserves jurisdiction to make any and all allowances **as may be**

proper," and "Debtor * * * shall pay * * * all **such** allowances as may be made by the Court."

The word "proper," as here employed, is the synonym of "legal" or "authorized by law."

> City of Mount Vernon v. Mount Vernon Trust Co., 270 N. Y. 400, 1 N. E. 2nd, 825, 827.

Would it be "proper" to allow fees contrary to the rules of decision laid down by the courts in construing the Bankruptcy Law and violative of that law itself?

Would it be "proper" for the Court to renounce its power and ignore its duty to disallow claims which were not compensable under those decisions and the statutes, on the theory that it was bound by the *ipse dixit* of the parties and had the right merely to fix the amount of compensation to be awarded?

D.

If the reorganization plan were susceptible of the interpretation given it by petitioner, the above-cited provision in the order of the Court would be tantamount to a disapproval of the plan insofar as it might authorize payment for services not compensable under the law.

In passing upon a somewhat similar situation, the Court, in Wright v. City National Bank & Trust Company, 104 Fed. 2nd. 285, 288, said:

> "The lower court, in its order approving the plan of reorganization, expressly provided that all disbursements by the trustee should be made as the court directed, which was tantamount to a disapproval of the plan insofar as it conferred on the reorganization committee, the authority to fix the compensation of the committee or its attorneys or other disbursements of the trustee."

III.

THE DECISION OF THE CIRCUIT COURT OF APPEALS DOES NOT DEPRIVE THE TORT CREDITORS OF ANY OF THEIR RIGHTS.

Petitioner's complaint (petitioner's brief, p. 28), that the construction placed by the decision sought to be reviewed upon the provision in the reorganization plan which he invokes deprives the tort creditors of certain rights, is not well taken.

Petitioner did not represent the tort claimants themselves; he represented their attorneys. He had no right of action against them nor lien upon their cause of action.

His application for allowance shows that the agreement between his committee and the reorganization committee was consummated in October, 1938. (Paragraph 66, R. 115.)

It then alleges that, prior to that time, "the committee had been acting at the instance of a number of attorneys representing the holders of a large amount of tort claims and the powers of attorney received from tort creditors had been solicited by the committee only through the attorneys representing such creditors." (Paragraph 67, R. 117.)

Paragraph IX of the protective committee agreement (R. 187) limits the amount of compensation to the committee [including its counsel] to be paid, at its option, by tort claimants who became parties to the agreement, to 2½% of the amount paid to them on their claims.

Tort claimants holding claims aggregating $1,234,684.05 became parties to the agreement. (R. 58.)

They were paid 35% of their claims under the provisions of the reorganization plan. (R. 25.)

They received $432,139 (35% of $1,234,684.05); 2½% of that amount is $10,803.48.

$10,803.48 is, therefore, the limit of the amount in the aggregate that the committee could have called upon the tort creditors to contribute for compensation for the services and expenses of the committee and its counsel.

The committee, its secretary, and petitioner as its counsel were allowed $28,028.23 for their services and expenses. (R. 233.)

IV.

IN ANY VIEW OF THE SITUATION AND REGARDLESS OF WHETHER THE RIGHTS OF PETITIONER WERE ENLARGED BY THE PROVISIONS OF THE REORGANIZATION PLAN, THE AMOUNT AWARDED TO HIM IS FAIR AND IS ALL HE IS ENTITLED TO RECEIVE.

Petitioner states in paragraph 5 of his application for allowance, that he devoted at least 3,200 hours to the work for which he asks compensation. (R. 60.)

It discloses (see paragraph 64, R. 105-118 for example) that a large number of these "hours" were spent in examining petitions, orders and reports connected with the administration of the estate and prepared by somebody else. It was all right, of course, for petitioner to do feather-stitching of that kind; but there is no reason, in law or justice, for asking Debtor to pay for it. So far as Debtor is concerned, the duty to look after those matters devolved upon the officers of the Court, and Debtor paid for those services.

The same observations apply to most of the other things enumerated by petitioner in his ninety-page petition.

We venture to suggest that the 3,200 hours could be halved and halved again, and, even then, petitioner would be given more than generous credit for the number of legitimate, compensable hours he devoted to this work.

However, even if petitioner devoted 3,200 compensable hours to the work, he was awarded ample compensation therefor.

3,200 hours would constitute 400 8-hour working days. The compensation awarded ($15,000) would be at the rate of $37.50 for each of such days.

The parties who had their money invested in this enterprise received about 50% of the amount of their claims (the exact ratio is 50.68%). The claims of all kinds aggregated $62,339,949.09 and the total amount received by the claimants (treating new securities at par) was $31,594,021.06. (R. 20-27.)

Under these circumstances, "the wind should be tempered to the shorn lamb."

In Callaghan v. Reconstruction Finance Corporation, 297 U. S. 464, 468, this Court said:

> "It has been the consistent policy of Congress that proceedings in Bankruptcy and under section 77B be economically administered."

And (l. c. 469):

> "One of the controlling reasons for the enactment of section 77B was the desire to reduce the costs of reorganization."

Dickinson Industrial Site, Inc., v. Cowan, ... U. S. ..., 34 L. ed. 549, 553, holds:

> "The history of fees in corporate reorganizations contains many sordid chapters. One of the purposes of Sec. 77B was to place those fees under more effective control."

In the light of the policy of Congress and the decisions of the courts with respect to the limitation of allowances in reorganization bankruptcy proceedings, in the interest of economy of administration, and in view of the fact that the investors in this case were given distributive recognition on the basis of fifty-cent dollars, $15,000 was a liberal allowance to petitioner for the work he did—even on the inflated basis of 3,200 hours.

Respectfully we submit this brief and pray that the application for a writ of certiorari be denied.

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